

### **31A-28-103. Coverage and limitations.**

(1) (a) This part provides coverage for a policy or contract specified in Subsection (2) to a person who is:

(i) a beneficiary, assignee, or payee of a person covered by Subsection (1)(a)(ii) regardless of where that person resides, except for a nonresident certificate holder under a group policy or contract; or

(ii) an owner of or a certificate holder under a policy or contract, other than an unallocated annuity contract or structured settlement annuity, if the owner or certificate holder is:

(A) a resident of Utah; or

(B) not a resident of Utah, but only if:

(I) the insurer that issued the policy or contract is domiciled in this state;

(II) the state in which the person resides has an association similar to the association created by this part; and

(III) the person is not eligible for coverage by an association in any other state because the insurer was not licensed in the state at the time specified in the state's guaranty association's law.

(b) For an unallocated annuity contract specified in Subsection (2):

(i) Subsection (1)(a) does not apply; and

(ii) except as provided in Subsections (1)(d) and (1)(e), this part provides coverage for the unallocated annuity contract specified in Subsection (2) to a person who is:

(A) the owner of the unallocated annuity contract if the contract is issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(B) an owner of an unallocated annuity contract issued to or in connection with a government lottery if the owner is a resident.

(c) For a structured settlement annuity specified in Subsection (2):

(i) Subsection (1)(a) does not apply; and

(ii) except as provided in Subsections (1)(d) and (1)(e), this part provides coverage for the structured settlement annuity specified in Subsection (2) to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(A) is a resident, regardless of where the contract owner resides; or

(B) is not a resident, but only if one or more of the contract owners of the structured settlement annuity is a resident, or no contract owner of the structured settlement annuity is a resident, but:

(I) the insurer that issued the structured settlement annuity is domiciled in this state;

(II) the state in which the contract owner resides has an association similar to the association created by this part; and

(III) the payee, beneficiary, or the contract owner is not eligible for coverage by the association of the state in which the payee or contract owner resides.

(d) This part may not provide coverage for a policy or contract specified in Subsection (2) to:

(i) a person who is a payee or beneficiary of a contract owner resident of this

state, if the payee or beneficiary is afforded any coverage by the association of another state; or

(ii) a person covered under Subsection (1)(b), if any coverage is provided to the person by the association of another state.

(e) (i) This part provides coverage for a policy or contract specified in Subsection (2) to a person who is a resident of this state and, in special circumstances, to a nonresident.

(ii) To avoid duplicate coverage, if a person who would otherwise receive coverage under this part is provided coverage under the laws of any other state, the person may not be provided coverage under this part.

(iii) In determining the application of this Subsection (1)(e) when a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this part shall be construed in conjunction with other state laws to result in coverage by only one association.

(2) (a) (i) Except as limited by this part, this part provides coverage to a person specified in Subsection (1) for:

(A) a direct, nongroup life, accident and health, or annuity policy or contract;

(B) a supplemental contract to a policy or contract described in Subsection (2)(a)(i)(A);

(C) a certificate under a direct group policy or contract; and

(D) an unallocated annuity contract issued by a member insurer.

(ii) For purposes of Subsection (2)(a)(i), an annuity contract and a certificate under a group annuity contract includes:

(A) a guaranteed investment contract;

(B) a deposit administration contract;

(C) an unallocated funding agreement;

(D) an allocated funding agreement;

(E) a structured settlement annuity;

(F) an annuity issued to or in connection with a government lottery; and

(G) an immediate or deferred annuity contract.

(b) This part does not provide coverage for:

(i) a portion of a policy or contract:

(A) not guaranteed by the insurer; or

(B) under which the risk is borne by the policy or contract owner;

(ii) a policy or contract of reinsurance, unless:

(A) an assumption certificate is issued before the coverage date;

(B) the assumption certificate required by Subsection (2)(b)(ii)(A) is in effect pursuant to the reinsurance policy or contract; and

(C) the reinsurance contract is approved by the appropriate regulatory authorities;

(iii) a portion of a policy or contract to the extent that the rate of interest on which it is based or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value, if the interest rate, crediting rate, or similar factor:

(A) is not excluded from coverage by Subsection (2)(b)(xi);

(B) averaged over the period of four years before the date on which the

association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged:

(I) for that same four-year period; or

(II) for the corresponding lesser period if the policy or contract was issued less than four years before the association became obligated; and

(C) exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available as determined on or after the earlier of the day on which the member insurer becomes:

(I) an impaired insurer under this part; or

(II) an insolvent insurer under this part;

(iv) a portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, accident and health, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or other person under:

(A) a multiple employer welfare arrangement as defined in 29 U.S.C. Sec. 1144;

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services only contract;

(v) a portion of a policy or contract to the extent that it provides:

(A) a dividend;

(B) an experience rating credit;

(C) voting rights; or

(D) payment of a fee or allowance to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payment with respect to the benefit plan;

(vii) a portion of an unallocated annuity contract that is not issued to or in connection with:

(A) a specific benefit plan of:

(I) employees;

(II) a union; or

(III) an association of natural persons; or

(B) a government lottery;

(viii) a portion of a policy or contract to the extent that the assessment required by Section 31A-28-109 that applies to the policy or contract is preempted by federal or state law;

(ix) an obligation that does not arise under the express written terms of the policy or contract issued by an insurer to the contract owner or policy owner, including:

(A) a claim based on marketing materials;

(B) a claim based on a side letter, rider, or other document that is issued by the insurer without meeting applicable policy form filing or approval requirements;

(C) a misrepresentation regarding a policy benefit;

- (D) an extra-contractual claim;
- (E) a claim for penalties; or
- (F) a claim for consequential or incidental damages;
- (x) a contract that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by a person that is:
  - (A) (I) the benefit plan; or
  - (II) the benefit plan's trustee; and
  - (B) not an affiliate of the member insurer;
- (xi) a portion of a policy or contract to the extent it provides for interest or other changes in value:
  - (A) to be determined by the use of an index or other external reference stated in the policy or contract; and
  - (B) (I) that have not been credited to the policy or contract; or
  - (II) as to which the policy or contract owner's rights are subject to forfeiture as of the date the member insurer becomes an impaired or insolvent insurer under this part; and
- (xii) a policy providing hospital, medical, prescription drug, or other health care benefit pursuant to United States Code, Title 42, Subchapter XVIII, Chapter 7, Part C or D, or federal regulations issued under Part C or D.

(3) Subject to Subsection (4), the benefits for which the association may become liable may not exceed the lesser of:

- (a) the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer;
- (b) with respect to one life, regardless of the number of policies or contracts:
  - (i) for a life insurance policy:
    - (A) if the insured died before the coverage date, \$500,000 of the death benefit;
    - (B) if the insurer received a valid request for cash surrender before the coverage date but has not paid the cash surrender value before the coverage date, \$200,000 of cash surrender benefits; or
  - (C) if neither Subsection (3)(b)(i)(A) nor (B) apply, the covered portion of each benefit provided under the policy;
  - (ii) for an annuity contract, the covered portion of each benefit provided under the contract;
  - (iii) for an accident and health policy:
    - (A) classified as health insurance, \$500,000; or
    - (B) not classified as health insurance, the covered portion of each benefit provided under the policy;
  - (c) for an individual, or a beneficiary of that individual if the individual is deceased, participating in a governmental retirement plan established under Section 401, 403(b), or 457, Internal Revenue Code, covered by an unallocated annuity contract, in the aggregate, \$250,000 in present value of annuity benefits, including:
    - (i) net cash surrender; and
    - (ii) net cash withdrawal values; or
  - (d) for a payee of a structured settlement annuity or a beneficiary of the payee if the payee is deceased, the limits set forth in Subsection (3)(b).

(4) Notwithstanding Subsections (3)(a) through (d), the association may not be obligated to cover more than:

(a) an aggregate of \$500,000 in benefits for any one life under:

- (i) Subsection (3)(b)(i)(A);
- (ii) Subsection (3)(b)(i)(B);
- (iii) Subsection (3)(b)(ii); and
- (iv) Subsection (3)(b)(iii)(B);

(b) \$5,000,000 in benefits for one owner of multiple nongroup policies of life insurance:

(i) whether the policy owner is an individual, firm, corporation, or other person;

(ii) whether the persons insured are officers, managers, employees, or other persons; and

(iii) regardless of the number of policies and contracts held by the owner; and

(c) \$5,000,000 in benefits, regardless of the number of contracts held by the contract owner or plan sponsor, for:

(i) one contract owner provided coverage under Subsection (1)(b)(ii)(B); or

(ii) one plan sponsor whose plans own, directly or in trust, one or more unallocated annuity contracts not included in Subsection (3)(b)(ii).

(5) (a) Notwithstanding Subsection (4)(c) and except as provided in Subsection (5)(b), the association shall provide coverage if one or more unallocated annuity contracts are:

(i) covered contracts under this part;

(ii) owned by a trust or other entity for the benefit of two or more plan sponsors; and

(iii) the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in the state.

(b) Notwithstanding Subsection (5)(a) the association may not be obligated to cover more than \$5,000,000 in benefits with respect to the unallocated contracts described in Subsection (5)(a).

(6) (a) The limitations set forth in Subsections (3) and (4) are limitations on the benefits for which the association is obligated before taking into account:

(i) the association's subrogation and assignment rights; or

(ii) the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies.

(b) The costs of the association's obligations under this part may be met by the use of assets:

(i) attributable to covered policies, as described in Subsection 31A-28-114(3)(c); or

(ii) reimbursed to the association pursuant to the association's subrogation and assignment rights.

(c) On and after the date on which the association becomes obligated for a covered policy, the association may not be obligated to provide benefits to the extent that the benefits are based on an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value if the interest rate, crediting rate, or similar factor exceeds the rate of interest determined by subtracting

three percentage points from Moody's Corporate Bond Yield Average as most recently available on each date on which interest is credited or attributed to the covered policy.

(d) In performing its obligations to provide coverage under Section 31A-28-108, the association may not be required to guarantee, assume, reinsure, perform, or cause to be guaranteed, assumed, reinsured, or performed a contractual obligation of the insolvent or impaired insurer under a covered policy or contract that does not materially affect the economic values or economic benefits of the covered policy or contract.

Amended by Chapter 292, 2010 General Session